

105TH CONGRESS
2D SESSION

S. 442

[Report No. 105–184]

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1997

Mr. WYDEN (for himself, Mr. KERRY, Mr. BURNS, Mr. MCCAIN, Mr. SHELBY, Mrs. MURRAY, Mr. ASHCROFT, Mr. FAIRCLOTH, Mr. LEAHY, Mrs. BOXER, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 5, 1998

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

[Strike all after the enacting clause and insert the part printed in italic]

JULY 21, 1998

Ordered referred to the Committee on Finance until the close of business on

July 30, 1998

A BILL

To establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that

would interfere with the free flow of commerce via the Internet, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Tax Freedom
 5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) As a massive global network spanning not
 9 only State but international borders, the Internet is
 10 inherently a matter of interstate and foreign com-
 11 merce within the jurisdiction of the United States
 12 Congress under Article I, Section 8 of the United
 13 States Constitution.

14 (2) Even within the United States, the Internet
 15 does not respect State lines and operates independ-
 16 ently of State boundaries. Addresses on the Internet
 17 are designed to be geographically indifferent. Inter-
 18 net transmissions are insensitive to physical distance
 19 and can have multiple geographical addresses.

20 (3) Because transmissions over the Internet are
 21 made through packet-switching it is impossible to
 22 determine with any degree of certainty the precise
 23 geographic route or endpoints of specific Internet
 24 transmissions and infeasible to separate intrastate

1 from interstate, and domestic from foreign, Internet
2 transmissions.

3 (4) Inconsistent and inadministrable taxes im-
4 posed on Internet activity by State and local govern-
5 ments threaten not only to subject consumers, busi-
6 nesses, and other users engaged in interstate and
7 foreign commerce to multiple, confusing, and bur-
8 densome taxation, but also to restrict the growth
9 and continued technological maturation of the Inter-
10 net itself, and to call into question the continued via-
11 bility of this dynamic medium.

12 (5) Because the tax laws and regulations of so
13 many jurisdictions were established long before the
14 Internet or interactive computer services, their appli-
15 cation to this new medium in unintended and unpre-
16 dictable ways threatens every Internet user, access
17 provider, vendor, and interactive computer service
18 provider.

19 (6) The electronic marketplace of services,
20 products, and ideas available through the Internet or
21 interactive computer services can be especially bene-
22 ficial to senior citizens, the physically challenged,
23 citizens in rural areas, and small businesses. It also
24 offers a variety of uses and benefits for educational
25 institutions and charitable organizations.

1 (7) Consumers, businesses, and others engaging
 2 in interstate and foreign commerce through the
 3 Internet or interactive computer services could be-
 4 come subject to more than 30,000 separate taxing
 5 jurisdictions in the United States alone.

6 (8) The consistent and coherent national policy
 7 regarding taxation of Internet activity, and the con-
 8 comitant uniformity, simplicity, and fairness that is
 9 needed to avoid burdening this evolving form of
 10 interstate and foreign commerce can best be
 11 achieved by the United States exercising its author-
 12 ity under Article I, Section 8, Clause 3 of the United
 13 States Constitution.

14 **SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON INTER-**
 15 **NET OR INTERACTIVE COMPUTER SERVICES.**

16 (a) MORATORIUM.—Except as otherwise provided in
 17 this section, no State or political subdivision thereof may
 18 impose, assess, or attempt to collect a tax directly or indi-
 19 rectly on—

20 (1) the Internet or interactive computer serv-
 21 ices; or

22 (2) the use of the Internet or interactive com-
 23 puter services.

24 (b) PRESERVATION OF STATE AND LOCAL TAXING
 25 AUTHORITY.—Subsection (a)—

1 (1) does not apply to taxes imposed on or meas-
2 ured by net income derived from the Internet or
3 interactive computer services;

4 (2) does not apply to fairly apportioned busi-
5 ness license taxes applied to businesses having a
6 business location in the taxing jurisdiction; and

7 (3) does not affect a State or political subdivi-
8 sion thereof's authority to impose a sales or use tax
9 on sales or other transactions effected by use of the
10 Internet or interactive computer services if—

11 (A) the tax is the same as the tax gen-
12 erally imposed and collected by that State or
13 political subdivision thereof on interstate sales
14 or transactions effected by mail order, tele-
15 phone, or other remote means within its taxing
16 jurisdiction; and

17 (B) the obligation to collect the tax from
18 sales or other transactions effected by use of
19 the Internet or interactive computer services is
20 imposed on the same person or entity as in the
21 case of sales or transactions effected by mail
22 order, telephone, or other remote means.

1 **SEC. 4. ADMINISTRATION POLICY RECOMMENDATIONS TO**
 2 **CONGRESS.**

3 (a) **CONSULTATIVE GROUP.**—The Secretaries of the
 4 Treasury, Commerce, and State, in consultation with ap-
 5 propriate committees of the Congress, consumer and busi-
 6 ness groups, States and political subdivisions thereof, and
 7 other appropriate groups, shall—

8 (1) undertake an examination of United States
 9 and international taxation of the Internet and inter-
 10 active computer services, as well as commerce con-
 11 ducted thereon; and

12 (2) jointly submit appropriate policy rec-
 13 ommendations concerning United States domestic
 14 and foreign policies toward taxation of the Internet
 15 and interactive computer services, if any, to the
 16 President within 18 months after the date of enact-
 17 ment of this Act.

18 (b) **PRESIDENT.**—Not later than 2 years after the
 19 date of enactment of this Act, the President shall transmit
 20 to the appropriate committees of Congress policy rec-
 21 ommendations on the taxation of sales and other trans-
 22 actions effected on the Internet or through interactive
 23 computer services.

24 (c) **RECOMMENDATIONS TO BE CONSISTENT WITH**
 25 **TELECOMMUNICATIONS ACT OF 1996 POLICY STATE-**
 26 **MENT.**—The Secretaries and the President shall take care

1 to ensure that any such policy recommendations are fully
 2 consistent with the policy set forth in paragraphs (1) and
 3 (2) of section 230(b) of the Communications Act of 1934
 4 (47 U.S.C. 230(b)).

5 **SEC. 5. DECLARATION THAT THE INTERNET BE FREE OF**
 6 **FOREIGN TARIFFS, TRADE BARRIERS, AND**
 7 **OTHER RESTRICTIONS.**

8 It is the sense of the Congress that the President
 9 should seek bilateral and multilateral agreements through
 10 the World Trade Organization, the Organization for Eco-
 11 nomic Cooperation and Development, the Asia Pacific
 12 Economic Cooperation Council, or other appropriate inter-
 13 national fora to establish that activity on the Internet and
 14 interactive computer services is free from tariff and tax-
 15 ation.

16 **SEC. 6. DEFINITIONS.**

17 For purposes of this Act—

18 (1) **INTERNET; INTERACTIVE COMPUTER SERV-**
 19 **ICE.**—The terms “Internet” and “interactive com-
 20 puter service” have the meaning given such terms by
 21 paragraphs (1) and (2), respectively, of section
 22 230(e) of the Communications Act of 1934 (47
 23 U.S.C. 230(e)).

24 (2) **TAX.**—The term “tax” includes any tax, li-
 25 cense, or fee that is imposed by any governmental

1 entity, and includes the imposition on the seller of
 2 an obligation to collect and remit a tax imposed on
 3 the buyer.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Internet Tax Freedom*
 6 *Act”.*

7 **SEC. 2. FINDINGS.**

8 *The Congress finds the following:*

9 (1) *As a massive global network spanning not*
 10 *only State but international borders, the Internet and*
 11 *the related provision of online services and Internet*
 12 *access service are inherently a matter of interstate*
 13 *and foreign commerce within the jurisdiction of the*
 14 *United States Congress under Article I, section 8,*
 15 *clause 3 of the United States Constitution.*

16 (2) *Even within the United States, the Internet*
 17 *does not respect State lines and operates independ-*
 18 *ently of State boundaries. Addresses on the Internet*
 19 *are designed to be geographically indifferent. Internet*
 20 *transmissions are insensitive to physical distance and*
 21 *can have multiple geographical addresses.*

22 (3) *Because transmissions over the Internet are*
 23 *made using computer protocols, in particular the*
 24 *Transmission Control Protocol / Internet Protocol,*
 25 *that utilize packet-switching technology it is impos-*

1 *sible to determine in advance the precise geographic*
 2 *route individual Internet transmissions will travel*
 3 *over, and it is therefore infeasible to separate domestic*
 4 *intrastate Internet transmissions from interstate and*
 5 *foreign Internet transmissions.*

6 *(4) Consumers, businesses, and others engaging*
 7 *in interstate and foreign commerce through online*
 8 *services and Internet access service could become sub-*
 9 *ject to more than 30,000 separate taxing jurisdictions*
 10 *in the United States alone.*

11 *(5) Inconsistent and inadministerable taxes im-*
 12 *posed on online services and Internet access service by*
 13 *State and local governments threaten to—*

14 *(A) subject consumers, businesses, and other*
 15 *users engaged in interstate and foreign commerce*
 16 *to multiple, confusing, and burdensome taxation,*

17 *(B) restrict the growth and continued tech-*
 18 *nological maturation of the Internet itself, and*

19 *(C) call into question the continued viabil-*
 20 *ity of this dynamic medium.*

21 *(6) Because the tax laws and regulations of so*
 22 *many jurisdictions were established long before the*
 23 *advent of the Internet, online services, and Internet*
 24 *access service, their application to this new medium*
 25 *and services in unintended and unpredictable ways*

1 *could prove to be an unacceptable burden on the*
 2 *interstate and foreign commerce of the Nation.*

3 *(7) The electronic marketplace of services, prod-*
 4 *ucts, and ideas available through the Internet can be*
 5 *especially beneficial to senior citizens, the physically*
 6 *challenged, citizens in rural areas, and small busi-*
 7 *nesses. It also offers a variety of uses and benefits for*
 8 *educational institutions and charitable organizations.*

9 *(8) A consistent and coherent national policy re-*
 10 *garding taxation of online services, Internet access*
 11 *service, and communications and transactions using*
 12 *the Internet, and the concomitant uniformity, sim-*
 13 *plicity, and fairness that is needed to avoid burden-*
 14 *ing this evolving form of interstate and foreign com-*
 15 *merce, can best be achieved by the United States exer-*
 16 *cising its authority under Article I, section 8, clause*
 17 *3 of the United States Constitution.*

18 **SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON THE**
 19 **INTERNET, ONLINE SERVICES, OR INTERNET**
 20 **ACCESS SERVICE.**

21 *(a) MORATORIUM.—Except as otherwise provided in*
 22 *this Act, prior to January 1, 2004, no State or political*
 23 *subdivision thereof may impose, assess, or attempt to collect*
 24 *any tax on—*

1 (1) *communications or transactions using the*
 2 *Internet; and*

3 (2) *online services or Internet access service.*

4 (b) *PRESERVATION OF STATE AND LOCAL TAXING AU-*
 5 *THORITY.—Subsection (a) shall not—*

6 (1) *affect the authority of a State, or a political*
 7 *subdivision thereof, to impose a sales, use, or other*
 8 *transaction tax on online services, Internet access*
 9 *service, or communications or transactions using the*
 10 *Internet if—*

11 (A) *the tax (including the rate at which it*
 12 *is imposed) is the same as the tax generally im-*
 13 *posed and collected by that State or political*
 14 *subdivision thereof in the case of similar sales,*
 15 *use, or transactions not using the Internet, on-*
 16 *line services, or Internet access service; and*

17 (B) *the obligation to collect or pay the tax*
 18 *from sales or other transactions using the Inter-*
 19 *net, online services, or Internet access service is*
 20 *imposed on the same person or entity as in the*
 21 *case of similar sales, use, or transactions not*
 22 *using the Internet, online services, or Internet*
 23 *access service;*

24 (2) *apply to taxes imposed on or measured by*
 25 *gross or net income derived from online services,*

1 *Internet access service, or communications or trans-*
2 *actions using the Internet, or on value added, net*
3 *worth, or capital stock;*

4 *(3) apply to fairly apportioned business license*
5 *taxes;*

6 *(4) apply to taxes paid by a provider or user of*
7 *online services or Internet access service as a con-*
8 *sumer of goods and services not otherwise excluded*
9 *from taxation pursuant to this Act;*

10 *(5) apply to property taxes imposed or assessed*
11 *on property owned or leased by a provider or user of*
12 *online services or Internet access service;*

13 *(6) apply to taxes imposed on or collected by a*
14 *common carrier, as defined in section 3 of the Com-*
15 *munications Act of 1934 (47 U.S.C. 153), acting in*
16 *its capacity as a common carrier;*

17 *(7) apply to taxes imposed on or collected by a*
18 *provider of telecommunications service, as that term*
19 *is defined in section 3 of the Communications Act of*
20 *1934 (47 U.S.C. 153); or*

21 *(8) apply to franchise fees imposed by a State or*
22 *local franchising authority, pursuant to sections 622*
23 *or 653 of the Communications Act of 1934 (47 U.S.C.*
24 *622 or 573), for the provision of cable services, as*
25 *those terms are defined by such Act.*

1 **SEC. 4. ADMINISTRATION POLICY RECOMMENDATIONS TO**
 2 **CONGRESS.**

3 (a) *CONSULTATIVE GROUP.*—*The Secretaries of the*
 4 *Treasury, Commerce, and State, in consultation with ap-*
 5 *propriate committees of the Congress, the National Tax As-*
 6 *sociation-sponsored Joint Communications and Electronic*
 7 *Commerce Tax Project and the National Conference of Com-*
 8 *missioners of Uniform State Laws, consumer and business*
 9 *groups, States and political subdivisions thereof, and other*
 10 *appropriate groups, shall—*

11 (1) *undertake an examination of United States*
 12 *domestic and international taxation of—*

13 (A) *communications and transactions using*
 14 *the Internet,*

15 (B) *online services and Internet access serv-*
 16 *ice, and*

17 (C) *the telecommunications infrastructure*
 18 *used by the Internet, online services, and Inter-*
 19 *net access service;*

20 (2) *consider any specific proposals made by the*
 21 *Joint Communications and Electronic Commerce Tax*
 22 *Project and the National Conference of Commissioners*
 23 *of Uniform State Laws concerning appropriate pa-*
 24 *rameters for taxation by States, and political subdivi-*
 25 *sions thereof, of matters described in paragraph (1);*
 26 *and*

1 (3) jointly submit appropriate policy rec-
 2 ommendations concerning United States domestic and
 3 foreign policies toward taxation of online services,
 4 Internet access service, and communications and
 5 transactions using the Internet, if any, to the Presi-
 6 dent within 18 months after the date of enactment of
 7 this Act.

8 (b) *PRESIDENT*.—Not later than 2 years after the date
 9 of enactment of this Act, the President shall, to the extent
 10 and in the form the President deems appropriate, transmit
 11 to the appropriate committees of Congress policy rec-
 12 ommendations on taxation of online services, Internet ac-
 13 cess service, and communications and transactions using
 14 the Internet.

15 **SEC. 5. DECLARATION THAT THE INTERNET SHOULD BE**
 16 **FREE OF FOREIGN TARIFFS, TRADE BAR-**
 17 **RIERS, AND OTHER RESTRICTIONS.**

18 *It is the sense of the Congress that the President should*
 19 *seek bilateral and multilateral agreements through the*
 20 *World Trade Organization, the Organization for Economic*
 21 *Cooperation and Development, the Asia Pacific Economic*
 22 *Cooperation Council, and other appropriate international*
 23 *fora to establish that commercial transactions using the*
 24 *Internet are free from tariff and taxation.*

1 **SEC. 6. DEFINITIONS.**

2 *For the purposes of this Act—*

3 (1) *INTERNET.*—*The term “Internet” means col-*
4 *lectively the myriad of computer and telecommuni-*
5 *cations facilities, including equipment and operating*
6 *software, which comprise the interconnected world-*
7 *wide network of networks that employ the Trans-*
8 *mission Control Protocol / Internet Protocol, or any*
9 *predecessor or successor protocols to such protocol, to*
10 *communicate information of all kinds by wire or*
11 *radio.*

12 (2) *ONLINE SERVICES.*—*The term “online serv-*
13 *ices” means the offering or provision of information,*
14 *information processing, and products or services to a*
15 *user as part of a package of services that are com-*
16 *bined with Internet access service and offered to the*
17 *user for a single price.*

18 (3) *INTERNET ACCESS SERVICE.*—*The term*
19 *“Internet access service” means the offering or provi-*
20 *sion of the storage, computer processing, and trans-*
21 *mission of information that enables the user to make*
22 *use of resources found via the Internet.*

23 (4) *TAX.*—*The term “tax” includes any charge*
24 *imposed by legislative authority to raise revenue for*
25 *the needs of the public, as well as any license or fee*
26 *that is imposed by any governmental entity. Such*

1 *term also includes the imposition on the seller of an*
2 *obligation to collect and remit to a governmental en-*
3 *tity any charge (as defined in the preceding sentence),*
4 *license, or fee imposed on the buyer by a govern-*
5 *mental entity.*